

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

BRYAN LEE STETSON,

Plaintiff,

v.

WASHINGTON DEPARTMENT OF
CORRECTIONS, RICHARD MORGAN,
BERNARD WARNER, and KATHRYN L.
BRUNER,

Defendants.

No. 3:15-cv-05524-BHS-KLS

ORDER DENYING MOTION FOR
APPOINTMENT OF COUNSEL

This matter comes before the Court on plaintiff's motion for appointment of counsel. Dkt. 70. Having carefully considered that motion and balance of the record, the Court finds it should be denied.

No constitutional right exists to appointed counsel in a § 1983 action. *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981); *see also United States v. \$292,888.04 in U.S. Currency*, 54 F.3d 564, 569 (9th Cir. 1995) (“[a]ppointment of counsel under this section is discretionary, not mandatory.”). In “exceptional circumstances,” a district court may appoint counsel for indigent civil litigants pursuant to 28 U.S.C. § 1915(e)(1)). *Rand v. Roland*, 113 F.3d 1520, 1525 (9th Cir. 1997), *overruled on other grounds*, 154 F.3d 952 (9th Cir. 1998) (emphasis supplied.)

To decide whether exceptional circumstances exist, the court must evaluate both “the

1 likelihood of success on the merits [and] the ability of the petitioner to articulate his claims *pro*
2 *se* in light of the complexity of the legal issues involved.” *Wilborn v. Escalderon*, 789 F.2d
3 1328, 1331 (9th Cir. 1986) (quoting *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983)). A
4 plaintiff must plead facts that show he has an insufficient grasp of his case or the legal issue
5 involved, and an inadequate ability to articulate the factual basis of his claim. *Agyeman v.*
6 *Corrections Corp. of America*, 390 F.3d 1101, 1103 (9th Cir. 2004).


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8 That a *pro se* litigant may be better served with the assistance of counsel is not the test.
9 *Rand*, 113 F.3d at 1525. Moreover, the need for discovery does not necessarily qualify the
10 issues involved as “complex.” *Wilborn*, 789 F.2d at 1331. Most actions require the further
11 development of facts during litigation. But if all that was required to establish the complexity of
12 the relevant issues was a demonstration of the need for such development, then practically all
13 cases would involve complex legal issues. *Id.*

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15 Plaintiff alleges in his motion he needs information from defendants, which he further
16 alleges defendants refuse to provide. This does not constitute an exceptional circumstance that
17 necessarily requires the appointment of counsel. Indeed, the many motions and other filings
18 plaintiff has submitted so far in this case show he is more than capable of pursuing this matter
19 *pro se*. For example, plaintiff already has filed a motion to compel in this case. *See* Dkt. 65. In
20 addition, the Court notes that this is not a complex case involving complex facts or law, and
21 plaintiff presents no evidence to show he is likely to succeed on the merits of his case. While
22 plaintiff may not have vast resources or legal training, he meets the threshold for a *pro se*
23 litigant. Accordingly, plaintiff has failed in his burden to demonstrate an inability to present his
24 claims to this Court without counsel.

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26 Accordingly, plaintiff’s motion for appointment of counsel (Dkt. 70) is DENIED. The

1 Clerk shall send a copy of this Order to plaintiff.

2 DATED this 30th day of September, 2016.

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6 Karen L. Strombom
7 United States Magistrate Judge
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